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April 1, 2009

Dear Chip and Eric:

The Trustees¹ for the Portland Harbor NPL site have reviewed the Lower Willamette Group's (LWG's) February 27, 2009 Memorandum regarding Work Plan Remedial Action Objectives (RAOs) Revision and Potential New "Management Goals" and EPA's March 6, 2009 Draft RAOs for the Portland Harbor Site and are submitting the comments below for EPA's consideration. These comments also reflect statements made during discussions between EPA, LWG and the government team at the February 9, 2009 RAOs meeting and the March 11, 2009 Portland Harbor Project Managers meeting.

The LWG is proposing to include the preliminary RAOs that were developed in the Work Plan and augment them with "supporting text" and "management goals" in the feasibility study (FS). The LWG's version of the RAOs lacks sufficient detail and would require lengthy "supporting text" in the ROD to fully convey and explain the objectives by which the effectiveness of the remedial actions would be measured. Furthermore, it is unclear to the Trustees how LWG's proposed "supporting text" or "management goals" would be enforced if not contained within the specific RAOs in the ROD. EPA, with the support of the entire government team, has put forth a set of RAOs that addresses specific receptors and exposure scenarios, as well as additional media and exposure pathways. The Trustees support the draft RAOs distributed by EPA on March 6, 2009, pending any changes necessitated by the results of the human health and ecological risk assessment.

The LWG contends that the RAOs proposed by EPA extend beyond conditions that are under the LWG's control for the sediment remedy, such as contamination entering the site from upstream, the effectiveness of upland source control, and loading from contaminated ground water, transition zone water and storm water. However, these contributions must be considered in the detailed analysis of alternatives in the FS in order to evaluate protectiveness, as well as short- and long-term effectiveness of the alternatives. Evaluation of these contributions is essential in determining whether an alternative adequately eliminates an exposure pathway or reduces exposure to acceptable levels and is necessary for EPA to select a remedy. The RAOs contained in the ROD will also be used to guide remedial design as well as remedial action implementation and monitoring, which will likely be conducted by individual PRPs rather than collectively by the LWG.

¹ Eight of the nine Trustees have reviewed these comments and requested that I send this letter on their behalf. The representative for the Confederated Tribes of the Warm Springs Reservation is out of the country and could not be reached for input.

In addition, the LWG took exception to certain RAOs that are more broadly tied to human health and ecological risk (EPA RAOs 5, 11, 12, 13 and 14). The Portland Harbor Programmatic Work Plan states:

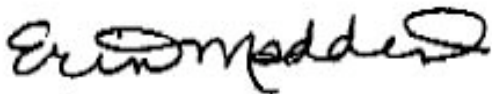
The RAOs must be developed consistent with Natural Resource Damage Assessment (NRDA) issues. The Lower Willamette Group hopes that the Superfund process will take place in conjunction with the NRDA process. A cooperative NRDA process will help determine the extent of restoration needed to restore services adversely affected by chemicals. RAOs must allow for the integration of Superfund remediation and NRDA primary or site-specific restoration wherever possible because this will likely be the most cost effective means of addressing both Superfund and NRDA requirements. Note that the purpose of the RI/FS is not to investigate or determine restoration needs, but it should be recognized that such needs will be identified through other processes, and should be integrated into the FS where possible.

Portland Harbor RI/FS Programmatic Work Plan, April 23, 2004 at Appendix A, § 2.4. EPA RAOs 11, 12, 13 and 14 (and RAO 5 with respect to elimination of fish consumption advisories), directly support the LWG's goal to integrate remediation and NRDA restoration. These RAOs support the protection and restoration of affected natural and tribal resources, as well as the services provided by those resources by preventing or minimizing the potential for recontamination, eliminating or minimizing transport of contaminants within the lower Willamette River to the Columbia River and Multnomah Channel, and supporting the protection and restoration of aquatic species and ecosystems.

The purpose of EPA RAO 13 is to protect against recontamination of the river during implementation of remedial activities. This RAO is completely missing from the LWG's version of the RAOs or its proposed management goals. This RAO should be retained to ensure that the responsible parties design and execute the remedial actions in such a way as to prevent or minimize the potential for recontamination of the river.

We understand that a conference call has been set for April 1, 2009 at 2 p.m. for an internal government team discussion of this issue. Several trustee representatives plan to be on that call and can answer any questions you have regarding these comments at that time.

Sincerely,

A handwritten signature in black ink, appearing to read "Erin Madden". The signature is fluid and cursive, with the first name "Erin" and last name "Madden" clearly distinguishable.

Erin Madden
Chair, Portland Harbor Trustee Council